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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-third session
Agenda item 15

DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 July 1991]

THE HUMAN RIGHTS SITUATION OF INDIGENOUS PEOPLES IN GUATEMALA

1. The International Federation of Human Rights (IFHR), which has recently conducted an investigation into the human rights situation in Guatemala during the month of April, is still concerned about constant violations of human rights in that country. Particularly since the victims are, for the most part, members of the indigenous population, which constitutes approximately 65 per cent of Guatemala's total population. As it has told the Sub-Commission on other occasions, IFHR considers the indigenous peoples of Guatemala to be the victim of widespread discrimination, hegemonic domination, economic exploitation, ethnic oppression and open repression, as has also been affirmed by experts in the field. This combination of unfavourable circumstances means that the human rights and fundamental freedoms of these peoples are being comprehensively and systematically violated.

2. The Political Constitution of the Republic of Guatemala, which entered into force in 1986, recognizes the existence of the indigenous population for the first time at this level. Its section III contains provisions on, inter alia, the right to a cultural identity, the ownership of communal lands and the assurance of adequate working conditions for peasants who are transferred from the Altiplano to farms on the Costa Sur. It also provides that a specific law will be adopted for the protection of indigenous communities. In this case, however, it is just the same as with other laws in Guatemala, which are not respected by the very authorities responsible for enacting and applying them. It is, moreover, impossible to apply such laws in a country where de facto discrimination exists.

3. With regard to economic and social rights, initial estimates for 1990 indicate that 9 out of 10 Guatemalan families live in poverty and that one in three individuals lives in extreme poverty, that is, on an income which fails to cover minimum living requirements (AVANCSO [Association for the Advancement of Social Sciences], La política de desarrollo del Estado guatemalteco, 1986-1987), while the Minister of Finance has confirmed that Guatemalans were worse off in 1990 than in 1985. For its part, the United Nations Development Programme (UNDP) reported that, in 1990, 73.2 per cent of Guatemalans were extremely poor and that 12.5 per cent of the population lived in extreme poverty; in other words, 84.8 per cent of the population is poor. The situation is worse in rural areas, where 96 per cent of the population is poor, with 83 per cent living in extreme poverty. All of this results in a short life expectancy and high rates of mortality, morbidity, malnutrition and illiteracy and is a serious violation of the economic and social rights of the indigenous population.

4. Human rights and civil and political rights are also being violated through extrajudicial executions of an individual or collective nature, enforced disappearances, forced recruitment into military service and mandatory participation in civil defence patrols, all of which are violations that keep Guatemala's rural population in a state of fear. Examples include the massacre of peasants in Santiago Atitlán on 2 December 1990, the extrajudicial execution of two members of the Runujel Junam Council of Ethnic Communities (CERJ) in Chumimá, Chichicastenango, and the recent disappearance of Santos Toj Reinoso, also a member of CERJ, on 26 May 1991.

5. Forced recruitment into military service, carried out in a discriminatory manner by the Guatemalan army, is another practice which violates the human rights of indigenous peasants, whose conscription is, given the manner in which it is effected, tantamount to kidnapping. Many grass-roots organizations have vociferously demonstrated their repudiation of this practice, which particularly affects indigenous youths, although it also has serious implications for the family and the community.

6. The application of this policy of individual extrajudicial execution, enforced disappearances, massacres and scorched earth continues to take a huge toll in terms of human suffering, producing orphans, refugees, displaced persons and widows, the majority of whom are indigenous persons. Their situation is today one of the most disturbing in terms of human rights and we shall therefore refer specifically to some of these sectors that have been harmed by Government policy.

7. The Guatemalan refugee community in Mexico, represented by its Permanent Commissions, has requested the Guatemalan Government to begin negotiations on the fulfilment of six conditions which the refugees have laid down for their collective, voluntary and organized return to the country with dignity and in safety. It is with the greatest concern that we have learned that, at the most recent meeting, held in Guatemala City on 4 June 1991, between the members of the Permanent Commissions and the National Commission for Attention to Returnees, Refugees and Displaced Persons (CEAR), which acts on behalf of the Government, the Government side refused to accept the six conditions, since they are already provided for in the Constitution. However, it is a well-known fact that laws are not respected in Guatemala and the refugees, as victims of repression by the security forces, therefore need specific measures of assistance. At the same meeting, the Chairman of CEAR, who is also Vice-President of the Republic, linked the refugees' representatives with the insurrection - the equivalent of a death threat in Guatemala. As a result of this intransigence on the part of the Government, formal talks have not yet begun, and this will delay the longed-for return to the country.

8. Other victims of Government violence are the thousands of persons - old and young, men and women - who are still, after almost 10 years, living in the mountainous areas of El Quiché department as members of the Peoples' Resistance Communities (CPR), which were organized many years ago, but came forth publicly only in September 1990 and have since then been demanding that the Guatemalan Government and armed forces should cease harassing their members, who are non-combattant civilians and therefore a protected category under international humanitarian law. These persons are the victims of constant violations of international humanitarian law, such as indiscriminate bombardment, and have also been accused by Government authorities of having links with the insurrection - an accusation which obstructs any possibility of talks aimed at improving their particularly difficult living conditions.

9. The Government's solution to the problem of refugees and displaced persons is to relocate them on the terms and under the conditions decided by the Government and the army. This is unacceptable to those who have been, and continue to be, the victims of repressive Government actions.

10. The situation of the widows, who, by conservative estimates, number some 50,000, deserves particular attention because they suffer many forms of discrimination: as women, as poor peasants, as indigenous persons and, now, as widows. It was therefore an historic event that they came together to establish the National Coordination of the Widows of Guatemala (CONAVIGUA), through which they are fighting for respect for their rights and as a result of which they have also suffered persecution and been accused of links to the guerrilla movement.

11. The internal displaced persons, whose number in 1989 was very conservatively estimated by the International Conference on Central American Refugees (CIREFCA) at 100,000, are represented by the National Council for Displaced Persons (CONDEG). They, too, have suffered the disappearance and/or execution of their leaders and members, but they nevertheless continue to present their just demands to the Government, although these have so far gone unheeded.

12. In the light of the foregoing, IFHR considers that the Sub-Commission on Prevention of Discrimination and Protection of Minorities should adopt a resolution expressing its concern at the human rights situation in Guatemala and, in particular, the situation of the indigenous peoples, emphasizing both the failure to guarantee their economic, social and cultural rights and the plight of the victimized sectors. It should also express its concern about the continuing system of forced recruitment into military service and call on the Guatemalan Government and armed forces to respect the rules of international humanitarian law in the context of a non-international armed conflict, whose political settlement should also be supported.

13. This information has also been brought to the attention of the Working Group on Indigenous Populations.

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-third session
Agenda item 3

REVIEW OF THE WORK OF THE SUB-COMMISSION

Written statement submitted by the World Confederation of Labour and the World Federation of Trade Unions, non-governmental organizations in Consultative Status (category I), by the Arab Organization for Human Rights, the Baha'i International Community, Four Directions Council, Human Rights Advocates, Inc., the International Abolitionist Federation, the International Association for the Defence of Religious Freedoms, the International Association of Democratic Lawyers, the International Commission of Health Professionals for Health and Human Rights, the International Council of Jewish Women, the International Federation - Terre des Hommes, the International Fellowship of Reconciliation, the International Indian Treaty Council, the International League for the Rights and Liberation of Peoples, the International Movement ATD Fourth World, the International Movement for Fraternal Union among Races and Peoples, the International Organization for the Elimination of All Forms of Racial Discrimination, the International Work Group for Indigenous Affairs, the Latin American Federation of Associations of Relatives of Disappeared Detainees, Pax Romana, the Union of Arab Jurists, the Women's International League for Peace and Freedom, of non-governmental organizations in Consultative Status (category II), and the World Student Christian Federation and by the Grand Council of the Crees (of Quebec), the Indian Council of South America, the Movement against Racism and for Friendship among Peoples, the Nordic Saami Council and the Parliamentary Association for Euro-Arab Cooperation, non-governmental organizations on the Roster

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

GE.91-12658/2340H

[7 August 1991]

IMPROVEMENT OF THE WORKING METHODS OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Proposal by the working group on the activities of the Commission on Human Rights and of the Sub-Commission and the role of the non-governmental organizations

1. At its meeting on 6 June 1989, the Special Committee of Non-Governmental Organizations on Human Rights established a working group on the activities of the Commission on Human Rights and of the Sub-Commission and the role of the non-governmental organizations. On 26 October 1990, the Special Committee instructed the working group to examine the question of the improvement of the Sub-Commission's working methods, on the basis of the document presented by Mr. Louis Joinet during the consultation with the non-governmental organizations held on 8 October 1990.

2. We have carefully studied the document submitted by Mr. Joinet, which represents a valuable contribution to the debate on the organization of the Sub-Commission's work.

3. Our criticism of the document is that it deals with only one - the least difficult - aspect of the question, namely, the participation of the non-governmental organizations. The question of the reform of the Sub-Commission is not addressed.

4. If there is to be a genuine improvement in the work of the Sub-Commission, the following major problems must be tackled:

(a) The agenda;

(b) The reports submitted to the Sub-Commission;

(c) Participation of the members, non-governmental organizations and Governments;

(d) Reform of the Sub-Commission.

A. The agenda

5. Since its establishment in 1947 pursuant to Economic and Social Council resolution 9 (II) of 21 June 1946, the Sub-Commission has seen its agenda grow longer year by year. The time has now come to rationalize that agenda. Such a rationalization is all the more desirable in that the universality of human rights is coming to be more and more widely accepted throughout the world, even though these rights continued to be violated.

6. In its report of 10 October 1989, the working group of the Special Committee of Non-Governmental Organizations on Human Rights stresses that "the grouping of agenda items, an aim that has been pursued during the last few sessions of the Commission and the Sub-Commission, could lead to a better

focusing and ordering of the discussions. However, it might also result in a considerable reduction in the overall time allotted to the non-governmental organizations for oral statements, despite the fact that comprehensive statements on combined items are more time-consuming than specialized statements. The time-limit customarily imposed on a statement should thus apply to a sub-item of the agenda, not to a combined or integrated agenda item." On the basis of these considerations, we propose the following agenda:

I. Elections and adoption of the agenda.

II. Civil and political rights:

Question of the violation of human rights in any part of the world;

The administration of justice and the human rights of detainees (with its four sub-items);

Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers;

The right to freedom of opinion and of expression; protection of journalists; protection of United Nations officials; prevention of hostage-taking, etc.

III. Economic, social and cultural rights:

The new international economic order

(a) The role and equal participation of women in development;

The realization of economic, social and cultural rights

(a) Extreme poverty;

(b) External debt, economic adjustment policies and their effects on the exercise of human rights.

IV. Elimination of discrimination and protection of minorities:

Elimination of apartheid;

Measures to combat racism and racial discrimination;

Discrimination against indigenous peoples;

Protection of minorities;

Question of genocide;

Prevention of discrimination against children, youth, women (including traditional practices);

Human rights and disability;

Contemporary forms of slavery;

Discrimination against HIV-infected people or people with AIDS.

V. Human rights and scientific and technological progress:

Dangerous and toxic wastes;

Human rights and the environment;

Elimination of chemical weapons.

VI. Promotion of human rights and study of existing mechanisms:

Encouraging universal acceptance of human rights instruments;

Supervisory mechanisms;

Status of experts and special rapporteurs;

Study of the Sub-Commission's work.

VII. Adoption of the report of the session.

7. With these seven items, the Sub-Commission would be able to complete its work in four weeks, without the need for night meetings. We shall now make some comments on the differences between the traditional agenda and the one we are proposing

(i) Our agenda gives an overview of the whole question of the promotion and protection of human rights: in other words, we have grouped together the items so as to cover civil and political rights, economic, social and cultural rights, the actual mandate of the Sub-Commission, that is, measures to eliminate discrimination and to protect minorities, the human rights problems resulting from industrialization and technological advances throughout the world, and the supervisory mechanisms available to the United Nations. We consider that, by dealing with all these items in a comprehensive way, the Sub-Commission could increase the efficiency of its work.

(ii) We have deleted from our agenda the item entitled "Review of further developments ...", because we consider that these questions could be dealt with under their respective agenda items. If the international community, represented in the Sub-Commission, wishes for example to reconsider a case of genocide already dealt with in the past, it will consider it under item IV of our agenda, since genocide represents the final solution in the struggle against an ethnic, religious or linguistic minority.

(iii) Our agenda must reflect the new post-cold-war era in which the promotion and protection of human rights have to be approached from a different angle. With the end of the East-West confrontation, we must work out a new way of tackling human rights problems. Today, more than ever before, all the peoples of the world wish to enjoy both their civil and political rights and their economic, social and cultural rights.

Our proposal aims at helping the Sub-Commission to deal with these questions globally.

B. Reports presented to the Sub-Commission

8. Anyone who has taken part in meetings or assemblies of private societies of the governing bodies of political parties, of trade unions, etc., knows that all the working papers are available to the participants at the outset of the proceedings. It is thus astonishing to discover that, at the sessions of the Sub-Commission, reports are often issued in only one working language, and are sometimes not available until three or four days before the end of the session. If the Sub-Commission is to work effectively, it is essential that reports be made available in all the working languages on the first day of each session.

C. Participation of members, NGOs and governments

9. The Sub-Commission's chief participants are the 26 independent experts. The non-governmental organizations and Governments are observers. The core contribution must thus be made by the experts. Nevertheless, all three parties must be taken into account in organizing the work of the Sub-Commission.

10. It is important that the agenda we are proposing should be taken in the order in which we have presented it and that the Sub-Commission's sessions should begin with the consideration of civil and political rights. In this way, questions of violations and detention could be considered in the first week and the testimony heard at the very beginning of the proceedings, giving the experts time to verify the information received and to obtain further information before adopting resolutions. In our view, the time table proposed would also facilitate the grouping together of interventions by topic within each of the five individual items. If speaking time were allocated so as to encourage joint statements, the number of individual statements might well be reduced.

11. We further propose that the order of statements to the Sub-Commission should be as follows:

1. Rapporteurs;
2. Non-governmental organizations;
3. Governments;
4. Experts.

Adoption of this order would make it possible to reduce by two thirds the time taken by Governments' rights of reply.

12. Furthermore, the report of the NGOs' working group stresses that,

> "...in order to perform their role to the full, the non-governmental organizations concerned with human rights must not start from a position of prejudice in favour of or against any Government; on the contrary, they must remind all Governments of their responsibilities and of the international commitments on human rights which they have freely undertaken, and must inform peoples and individuals of their rights and of the means with which to defend them. [...] Non-governmental organizations' independence, freedom of action and pluralistic expression are fundamental rights. The full exercise of those rights is a decisive factor in ensuring the effectiveness of the United Nations in the area of human rights. Non-governmental organizations' rights must be vigorously reaffirmed. The utmost vigilance is needed in order to counter any threat of an abusive limitation of those rights".

D. Reform of the Sub-Commission

13. Since its establishment in 1947, the Sub-Commission has undergone very few reforms. However, by its resolution 1983/32 of 27 May 1983, the Economic and Social Council introduced the following reform:

> "... notwithstanding paragraph 2 of article 13 of the rules of procedure of the functional commissions of the Economic and Social Council, the following rules shall henceforth apply to the Sub-Commission on Prevention of Discrimination and Protection of Minorities:
>
> (a) A nomination of a candidate for membership of the Sub-Commission may be accompanied by a nomination of an expert of the same nationality, who shall be elected simultaneously with the candidate for membership, and who may serve temporarily as an alternate if the member is unable to attend;
>
> (b) The qualifications for alternates shall be the same as for members;
>
> (c) No person may serve as alternate for a member except the expert elected as alternate, pursuant to subparagraph (a) above."

This reform was a major step forward, which allowed the Sub-Commission to retain its own identity throughout its work.

14. We propose that the Economic and Social Council should introduce a new reform on the question of a vote by secret ballot on sensitive issues such as those relating to violations and detentions.

15. The fact that more than 80 per cent of its members are lawyers also poses a problem for the Sub-Commission. We propose that, in future elections, the Commission on Human Rights should ensure that other professions, such as economists, political scientists, anthropologists, historians, sociologists and scientists, are represented. We think that, in order to prepare reports on the agenda items we have proposed, other specialists are needed in addition to lawyers. In our view, it is difficult for an organ 80 per cent of whose

members are lawyers to prepare all the reports it needs in order to function properly. Some observers who follow the Sub-Commission's work very closely even take the view that the fact that certain reports are behind schedule is due to the absence of specialists other than lawyers. If the present election procedure cannot solve this problem, the Sub-Commission will have to call on outside specialists to act as rapporteurs for certain reports. In order to guarantee the independence of the Sub-Commission's members, those members should not also hold other - governmental - positions, or, at any rate, not within the United Nations system. It would be helpful if the Economic and Social Council were to draw up rules to this effect.